

**From:** maxwell@nodots-daemon@inetgw  
**To:** Microsoft ATR  
**Date:** 1/24/02 1:16am  
**Subject:** Microsoft Settlement

I'm writing to express my vehement objection to the proposed Microsoft antitrust settlement. Both as a citizen and as a professional computer programmer, I respectfully insist that Microsoft face a meaningful punishment for its unlawful actions. The proposed settlement doesn't even come close.

In large measure, the settlement merely restates the existing law or the earlier settlement agreement -- this does not punish Microsoft in any way.

The remaining portions of the settlement contain loopholes big enough to drive a monopoly through. For example, Microsoft gets to choose to whom they will disclose API and protocol documentation. Microsoft has already made it clear that its most serious competition, open source software, does not meet its criteria for an "authentic and viable" business (to use language from the settlement). In any event, if their past behavior proves anything, it's that they will not make such decisions in good faith. (Indeed, their bad-faith actions led to the current trial: absurdly, Microsoft claimed they were "integrating" their Web browser but not "bundling" it. A distinction without a difference if I ever saw one, but it enabled Microsoft to unlawfully crush yet another competitor.)

Adding insult to injury, Microsoft can entirely sidestep those already limited and ineffectual disclosure requirements by claiming that they must do so for security reasons. This provision is a complete absurdity: it may be counterintuitive, but true security is achieved by using open standards, which can be inspected for flaws by the broader security community. You may be sure that Microsoft knows this, so it's worth contemplating why this measure is in the agreement at all. There is only one answer: to enable Microsoft to emasculate the agreement whenever its provisions are inconvenient.

The proposed oversight committee cannot usefully address these concerns, or the dozens of others like them, for two main reasons. First, Microsoft itself will have considerable control over the committee, as Microsoft chooses one member directly and one of the other two members indirectly. (I hope that if I ever break the law, I get to choose my own parole officer.) Second, the committee would generally operate in secret, so serious objections on the part of the committee's only truly independent member may never reach the public. This mandated secrecy, coupled with the committee's guaranteed ineffectiveness, must inevitably erode any public confidence in the committee's trustworthiness -- and, by extension, in the justice system itself.

Finally, I object to the settlement on philosophical grounds. I believe that the law should apply to the rich and powerful -- including rich and powerful corporations -- just as it would apply to you or me. If I robbed a bank, I'd expect more punishment than a stern warning not to do it again. At the very least, I imagine I'd be required to forfeit my ill-gotten gains (which, in Microsoft's case, amounts to tens of billions of dollars), in addition to harsh punitive measures. If Microsoft's punishment is any less severe -- well, then I guess I'll know what the law is worth.

Thank you for your kind consideration.

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R H L U Scott Maxwell: | ``Life results from the non-random survival  
E A I X maxwell@ | of randomly varying replicators."  
D T N 7 ScottMaxwell.org | -- Richard Dawkins